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July 30, 1999

**VIA HAND DELIVERY**

Alvin McCloud  
Common Carrier Bureau, Network Services Division  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 6-A423  
Washington, D.C. 20554

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JUL 30 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Level 3 Communications, Inc.  
Electronic Version of Comments in CC Docket No. 99-200

Dear Mr. McCloud:

On behalf of Level 3 Communications, Inc. ("Level 3"), enclosed please find an electronic copy of Level 3's comments in the above-referenced docket. A paper copy of Level 3's comments is being concurrently filed through the Office of the Secretary.

Should you have any questions with respect to this matter, please do not hesitate to call.

Respectfully submitted,

*Ronald W. Del Sesto, Jr.*

Ronald W. Del Sesto, Jr.

Enclosure

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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JUL 30 1999

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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Connecticut Department of Public Utility	)	RM No. 9258
Control Petition for Rulemaking to Amend the	)	
Commission's Rules Prohibiting Technology-	)	
Specific or Service-Specific Area Code Overlays	)	
	)	
Massachusetts Department of Telecommunications	)	NSD File No. L-99-17
and Energy Petition for Waiver to Implement a	)	
Technology-Specific Overlay in the 508, 617, 781,	)	
and 978 Area Codes	)	
	)	
California Public Utilities Commission and the	)	NSD File No. L-99-36
People of the State of California Petition for	)	
Waiver to Implement a Technology-Specific or	)	
Service-Specific Area Code	)	

**COMMENTS OF  
LEVEL 3 COMMUNICATIONS, INC.**

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Dated: July 30, 1999

Counsel for Level 3 Communications, Inc.

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## SUMMARY

Level 3 commends the Commission for considering the issue of numbering resource optimization. While numbering resources are becoming more scarce for a variety of reasons, it is important for the Commission to proceed carefully. Competitively neutral rules that impose the least amount of regulatory burdens are needed to preserve and encourage competition. Level 3 agrees with many of the measures proposed by the Commission to improve number optimization. Level 3 agrees that the Commission should require all users of numbering resources to supply forecast and utilization data to the NANPA. The Company further agrees that other proposals, like rate center consolidation, promise to provide long-term solutions to the problem of number exhaust.

There are number of respects, however, in which Level 3 believes that the Commission's proposals would either negatively impact the competitive marketplace or need further study. Placing additional regulatory burdens on carriers seeking initial codes will yield few long-term benefits. Level 3 is concerned about the competitive neutrality of rules that would require carriers to reach certain utilization thresholds before carriers could obtain growth codes. While Level 3 supports mandating utilization and forecasting data from carriers, Level 3 believes that such data should not bind carriers because many external factors impact carrier's business plans. Level 3 supports the use of audits, but supports implementing "for cause" audits as the sole mechanism due to concerns of cost, efficiency and equity. The Company also agrees with delegating enforcement power to the NANPA, but notes that establishing due process procedures is necessary. Level 3 strongly objects to reducing the amount of time that carriers can retain NXX codes as the benefits of such a rule are small, while the impact of such a rule on new entrants is large.

Outside of administrative measures, Level 3 agrees that rate center consolidation will yield the greatest contribution to number optimization. However, as recognized by the Commission, certain areas are more amenable to such a solution. Therefore, the Commission should engage in consolidation on a case-by-case basis. Also, due to the uncertainty of the substantial costs of such a measure, carriers should bear their own costs for compliance. Since number pooling requires number portability, as a matter of policy, the Commission should wait until all carriers that use numbering resources can participate in its conservation. Any number pooling mechanism that is put in place must be accomplished in a competitively-neutral manner. Imposing a sequential numbering requirement negatively impacts new entrants as the provision of customized number requests allows new entrants to distinguish themselves. Finally, economic theories that support the selling of numbers ignore the distortions inherent in the telecommunications marketplace.

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**COMMENTS OF  
LEVEL 3 COMMUNICATIONS, INC.**

Level 3 Communications, Inc. ("Level 3" or the "Company"), by undersigned counsel and pursuant to the Federal Communications Commission's ("Commission's") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding,<sup>1</sup> hereby submits its Comments.

**I. INTRODUCTION**

Level 3 is a communications and information services company that is building an advanced Internet Protocol technology-based network connecting 25 cities across the United States. Level 3's network will be completed in phases by 2001. The Company also plans to build local networks in cities across the country and to interconnect those networks with its national long distance network.

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<sup>1</sup> *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Notice of Proposed Rulemaking, rel. June 2, 1999 [hereinafter *Numbering NPRM*].

As a facilities-based provider of local services, Level 3 is dependent upon access to numbering resources to serve customers in order to expand its operations.

Level 3 commends the Commission for considering the issue of numbering resource optimization. While numbering resources are becoming more scarce for a variety of reasons, it is important for the Commission to proceed carefully. Competitively neutral rules that impose the least amount of regulatory burdens are needed to preserve and encourage competition.

## **II. ADMINISTRATIVE MEASURES**

### **A. The FCC Should Neither Require Carriers to Verify Their Need for Obtaining Initial Codes Nor Should the Commission Require Certain "Fill Rate" Thresholds to Obtain Initial Codes in New Areas**

Level 3 opposes the adoption of any rules that would require a carrier to make a demonstration of need in order to obtain initial NXX codes. The demands of the marketplace and existing regulatory requirements<sup>2</sup> require carriers to consider their equipment, network/switch readiness, business plans and a myriad of other factors prior to requesting initial codes. Adding more regulations will make it harder for carriers to acquire initial codes, which are essential to their business. In today's competitive marketplace, carriers need the flexibility to adapt their business plans as opportunities develop and to offer service in a footprint defined by the demands of the market. Placing more regulatory requirements on new entrants will frustrate the development of the competitive provision of telecommunications services.

Because a carrier's market entry is influenced by factors outside its control, any Commission imposed criteria to show need will fall short. For example, the level of existing investment and a

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<sup>2</sup> Carriers already have to abide by certain regulatory requirements in order to be eligible to receive codes. *See* Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008 (rev. Apr. 26, 1999) at § 4.1.4 ("CO Code Guidelines"); *See Numbering NPRM* at ¶ 58 n.93.



carrier's ability to attract future capital play an important role in determining its service area. The level of funding available to a carrier at any given moment is difficult to predict. Thus, there is nothing to suggest that the adoption of burdensome regulations regarding a showing of need would impact the assignment of initial codes.

The Commission also should not require competitive carriers to reach a certain utilization threshold ("fill rate") in order to obtain initial NXX codes in new wire centers. Fill rates for initial NXX codes in new areas have no relationship to the timing of when a competitive carrier will need additional numbers in a new market. Fill rates define historical need in a particular location but have no relationship to future demand. Furthermore, imposing fill rate thresholds would artificially limit the geographic scope of carriers' operations. For example, a carrier may only serve customers in a rate center with a 15% fill of its NXX code for that area. Yet the carrier may see a significant opportunity to attract a sizeable customer base in another rate center. If the carrier is denied the ability to obtain a NXX code to serve that second rate center simply because it was unable at that time to attract some threshold of customers in its first rate center, this creates an unjustified artificial barrier to entry. Minimum fill rates unnecessarily intrude upon carriers' business plans and impair their ability to expand service to consumers. Minimum fill rates could force carriers to develop infrastructure according to the artificial and inefficient demands of regulation rather than the efficiency of the marketplace.

Finally, adopting such measures will do little to solve the problem of number exhaust since the current guidelines already provide for the return of unused codes. Limiting access to initial codes will not have lasting impact on the greater problem of number exhaust. The Commission should focus its resources on measures that will have a larger effect on efficient number utilization.

B. The Commission Should Not Restrict Growth Codes by Establishing Utilization Thresholds

Limiting access to growth codes by establishing utilization thresholds will also have a greater impact on new market entrants than on established providers of telecommunications services. Since incumbent local exchange carriers (“ILECs”) have an established customer base and provide service with NXX codes that have been in operation for a longer period of time, ILECs will usually have greater utilization rates than competitive providers of telecommunications services.<sup>3</sup> Determining the method for calculating the appropriate utilization threshold is a complex process that would require taking into account a great number of variables.<sup>4</sup> Creating a regulatory structure that accurately reflects geographic differences, the maturity of certain markets and other important issues would result in voluminous rules that would vary throughout the country. It is unclear why such a structure is necessary when other methods, such as rate center consolidation (“RCC”), promise to both improve utilization rates and enhance number optimization. For these reasons, Level 3 urges the Commission not to make access to growth codes contingent upon utilization threshold rates.

C. The Commission Should Not Require the Same Fill Rates from CLECs and ILECs Seeking Growth Codes

If the Commission does impose minimum fill rates, then it should establish different rates for competitive local exchange carriers (“CLECs”) and ILECs. As the Commission recognizes in its NPRM, establishing a utilization threshold (“fill rate”) that does not recognize the difference between ILECs and CLECs will discourage market entry and make it more difficult for a competitive

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<sup>3</sup> See *Numbering NPRM*, at ¶ 65.

<sup>4</sup> See *id.* at ¶¶ 63-67.

carrier to respond to new opportunities.<sup>5</sup> Since ILECs have an established customer base and provide service in mature markets, an ILEC in most cases will have a higher utilization rate than a CLEC. The reality of the situation demands that the Commission adopt different fill rates depending on whether the carrier is an ILEC or a CLEC.

While the Commission stated that “[i]mposing the same utilization requirements on carriers with small market presence as on those with a much larger presence may discourage entry and competition, as well as diminish a smaller or newer carrier’s ability to react to market demands,”<sup>6</sup> it is unclear why it determined that applying different fill rates should extend only to carriers with up to ten NXX codes. This limitation is not consistent with the marketplace where new entrants need NXXs in each rate center. This number can be as high as 40 in some areas, just to provide initial service. Thus, limiting the different fill rate requirements to those carriers with up to ten NXXs will do little to address the disparate negative effect such a regulation will have on CLECs.

D. Utilization and Forecasting Data Should not Bind Carriers and the Commission Should Adopt Provisions to Ensure the Confidentiality of the Data Provided to the NANPA, the FCC and the State Commissions

Level 3 supports the Commission’s tentative conclusion that it should require all users of numbering resources to supply forecast and utilization data to the NANPA.<sup>7</sup> Level 3 requests that carriers not be subject to providing duplicate information to state commissions, nor should states have the ability to require reports differing in substance or frequency from that adopted on the national level. Providing reports to a national entity will impose a substantial regulatory burden on

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<sup>5</sup> See *id.*, at ¶ 68.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*, at ¶ 73

carriers and allowing states access to the data supplied will eliminate the need for states to engage in similar activity.

While Level 3 supports the Commission's efforts to collect utilization data and forecasting information, the Company does not agree that such data should be used to deny carriers access to numbers. Competitive carriers need a great deal of flexibility in order to take advantage of business opportunities as they arise. Superimposing a regulatory structure on top of the business plans of carriers does not allow for the efficient deployment of telecommunications services.<sup>8</sup>

Other problems with binding carriers to forecasting data are that such data is based on the business plans of the carrier at the time the survey is developed and the inability of carriers to know precisely which geographic area they will enter next. It is impossible for carriers to predict with certainty where the best opportunities will arise. Such determinations are driven by sales which are unpredictable. If a carrier is denied access to codes in a certain geographic area because it failed to provide forecasting data for that particular area, the carrier will be unable to expand according to consumer demand. It will also encourage carriers to provide forecasting data for areas where they have no present intention to enter for fear that they may be barred in the future from requesting codes. Therefore, the forecasting data provided by carriers to any regulatory body should not be utilized to regulate the business plans of the carrier providing the information, but rather to regulate the industry as whole.

Level 3 agrees with the NANC's recommendations concerning the confidentiality of data.<sup>9</sup> Specifically, Level 3 supports the provision of aggregated data to state commissions solely for a

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<sup>8</sup> See *supra* Section I.B.

<sup>9</sup> See *Numbering NPRM*, at ¶ 78.

stated purpose. Further, Level 3 agrees with the NANC that only those states that have a legally enforceable confidentiality agreement in place should have the ability to obtain carrier-specific data.

E. A Neutral Third Party Should Have the Ability to Engage in “For Cause” Audits

Level 3 agrees that “for cause” audits will assist in promoting number resource optimization, but it opposes the use of regularly scheduled and random audits.<sup>10</sup> As with all proposed regulations, the cost of such procedures must be weighed against the benefits. As noted by the Commission, an annual regularly scheduled audit would be too costly to justify.<sup>11</sup> However, even conducting such audits every three years would be extremely costly and highly burdensome for any entity to process. When measured against the benefits, it is extremely difficult to justify the expense of regularly scheduled audits.

Imposing random audits on carriers exposes companies to the arbitrary application of a costly process. The example provided in the NPRM, that is, choosing carriers based on historically high demand, or new carriers that are requesting large amounts of numbering resources,<sup>12</sup> demonstrates that this is not an equitable method of targeting carriers. It is unclear why a carrier that has a historically high demand for numbering resources that is not subjected to a “for cause” audit should be subject to a random audit. While the Commission correctly notes that random audits are less costly on the *industry* than regularly scheduled audits, Level 3 respectfully submits that the cost of an audit on a particular carrier should not be ignored or considered inconsequential.

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<sup>10</sup> See *id.* at ¶ 84 (proposing the use of “for cause,” regularly scheduled, and random audits).

<sup>11</sup> See *id.* at ¶ 86.

<sup>12</sup> See *id.* at ¶ 87.

The most effective and equitable alternative is the “for cause” audit. When a carrier submits information that is inaccurate or misleading, that carrier would be subject to a “for cause” audit. When specifically targeting bad actors, “for cause” audits are cost effective and efficient. Subjecting carriers that have been found to provide inaccurate or misleading information to follow-up audits would also work to ensure that such companies do not continue to engage in such behavior. “For cause” audits provide the best solution and require much fewer resources for all parties involved.

Level 3 agrees that audit responsibility should fall to a neutral third party. Consistent with the Commission’s proposed reporting requirements,<sup>13</sup> the party responsible for audits should have the ability to utilize the reporting data on a national scale. Since the only effective solution to number exhaust will be the adoption of national standards coupled with a national enforcement mechanism, the party responsible for conducting audits should have the ability to scrutinize carriers’ data on an interstate basis. The development of uniform reporting requirements and the application of consistent enforcement weighs in favor of a single entity at the national level responsible for auditing.

F. The NANPA Should Be Empowered to Impose Limited Sanctions and Due Process Considerations Must Be Part of Any Enforcement Mechanism

Level 3 agrees that an appropriate enforcement mechanism is necessary to ensure compliance with the Commission’s rules by all users of numbering resources.<sup>14</sup> The NPRM correctly asserts that the NANPA is in the best position to detect a carrier’s violation of a numbering assignment rule or guideline. Furthermore, number conservation is a national issue and therefore requires enforcement

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<sup>13</sup> The Commission has already tentatively concluded that the NANPA should be the entity responsible for collecting forecasting and utilization data. *See Numbering NPRM*, at ¶ 73.

<sup>14</sup> *See Numbering NPRM*, at ¶ 91.

at the national level. Level 3 agrees with the Commission's tentative conclusion that the NANPA should be empowered to withhold NXX codes as a sanction for violation of the CO Code Guidelines, particularly where the violation involves repeated failure or refusal to supply accurate and complete utilization data.<sup>15</sup> However, as with any adjudicatory process that has the potential to impose substantial sanctions, the imposition of such penalties must apply in clearly defined situations, must have a reasonable duration and carriers must have the opportunity to respond and the ability to appeal. The appropriate body to review appeals from the NANPA is the Commission. Numbering policy, administration and enforcement must occur at the national level. Thus, the Commission is the appropriate regulatory body to review sanctions imposed by the NANPA.

The NPRM also seeks comment on the appropriate regulatory body to consider enforcement action when it is more appropriately undertaken by regulatory authorities.<sup>16</sup> Again, the appropriate regulatory body is the Commission. Aside from the fact that numbering policy must be national in scope, administrative convenience and cost considerations favor consolidating enforcement actions regarding numbering violations with the Commission. Subjecting carriers to potentially numerous state commissions with differing procedures, standards and penalties will not only negatively impact carriers, but will inevitable delay enforcement and result in inconsistent numbering policy. The demands of uniformity, consistency and efficiency favor the Commission as the appropriate body.

If the Commission were to determine that state commissions are in a better position to undertake enforcement action in certain situations, Level 3 requests that the Commission work with the states to develop uniform guidelines and procedures concerning numbering issues. Numbering

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<sup>15</sup> See *id.* at ¶ 92.

<sup>16</sup> See *id.* at ¶ 93

policy must be developed on the national level in order to be effective. An important element of such policy is enforcement. If states were allowed to develop their own methods for determining violations and exacting penalties, numbering policy would quickly be disjointed and carriers could potentially be subject to conflicting regulations. Thus, it is important for Commission to insure uniformity in this area.

G. The Commission Should Not Make it More Difficult for New Entrants to Obtain Numbering Resources

The NPRM suggests that reclamation and reuse of unused NXX blocks is a method of number optimization that is quick and easy to implement.<sup>17</sup> To this end, the Commission proposes to reduce the length of time a carrier may reserve an NXX code from 18 months to three months and to reduce the extension period from six months to 30 days.<sup>18</sup> Level 3 strongly objects to such modifications. The ability of a new entrant to reserve codes is essential to competing with established carriers. At the same time, it is extremely difficult for a new entrant to accurately predict its need for numbering resources. As discussed earlier, there are many factors outside the new entrant's control which may delay its ability to provide service.<sup>19</sup> New entrants make requests for numbering resources based on the best information available to them at the time of the request. Denying new entrants access to numbering resources threatens to frustrate competition.

Making the acquisition of numbering resources more difficult for new entrants is not in the public interest. The benefits of a competitive market place cannot be realized if the barriers to entry

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<sup>17</sup> See *id.* at ¶ 95.

<sup>18</sup> See *id.* at ¶ 99.

<sup>19</sup> See *supra* Section I.B.



are made too high. Further, it does not address the larger problem of number exhaust. Restricting new entrants access to numbering resources is not sound policy. The Commission should instead focus on alternatives that will reap larger benefits.

### III. OTHER SOLUTIONS

#### A. The Commission Should Implement Rate Center Consolidation on a Case-by-Case Basis and Carriers Should Bear their Own Costs for Compliance

The Commission correctly notes that the rate center structure places a great strain on numbering resources.<sup>20</sup> Merging two or more distinct rate centers into a single rate center (“rate center consolidation” or “RCC”) could provide CLECs with better and more competitively neutral access to NXX codes and telephone numbers on a going forward basis. Many CLECs have to obtain a new NXX code each time they want to expand the geographical scope of their business.<sup>21</sup> Furthermore, as the 1998 report released by the North American Numbering Council (“NANC Report”) accurately notes, “RCC can be used as an NXX optimization measure to delay the exhaust of NPAs and future jeopardy situations.”<sup>22</sup> Thus, RCC could serve the dual purposes of opening new areas in each NPA to the benefits of competitive entry, and maximizing the “fill” of each NXX code.

This is not to say, however, that RCC should be viewed as the only appropriate solution for number exhaust in every circumstance. For example, although the benefits of RCC are relatively

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<sup>20</sup> See *Numbering NPRM*, at ¶ 112.

<sup>21</sup> See *id.*

<sup>22</sup> Number Resource Optimization Working Group, *Modified Report to the North American Numbering Council on Number Optimization Methods*, § 1.5.1 (Oct. 20, 1998) (“NANC Report”).

clear, the costs of RCC are not as readily apparent or identifiable.<sup>23</sup> In addition to the uncertainty relating to costs, implementation of RCC could have other impacts on competition depending upon the circumstances. Most significantly, E911 routing could be affected adversely if RCC is implemented in a haphazard manner and the rating of calls will also have to be modified.<sup>24</sup>

Notwithstanding the uncertainty surrounding the costs and administrative implications of implementing RCC on an individual case basis, Level 3 believes that it can be a valuable tool nationwide in promoting competitive entry, preserving numbering resources, and allowing carriers to make the most efficient use of the NXX codes they hold. Additionally, as set out in the NPRM, there are areas where implementing RCC is fairly easy.<sup>25</sup> To help alleviate the uncertainty and make the best use of RCC, Level 3 suggests that the Commission implement RCC on a case-by-case basis. Further, since the costs of RCC will vary depending on the circumstances,<sup>26</sup> carriers should bear only the costs associated with their own compliance.

**B. The Commission Should Impose Number Pooling on All Carriers that Utilize Numbering Resources and Should Craft Regulations that do not Favor ILECs**

The *NPRM* recognizes the intricacies and complexities involved in implementing a method for number pooling that will efficiently use existing network resources to address the larger problem

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<sup>23</sup> The NANC Report states that "the cost of RCC is subject to a number of variables unique to each geographical area and service provider." NANC Report at § 1.4. Although the NANC submitted questionnaires seeking to capture implementation cost information from carriers and consumers, it admits that "[i]t has been difficult to identify an overall cost that is applicable to all areas." *Id.*

<sup>24</sup> *Id.* at § 1.9.1.

<sup>25</sup> *See Numbering NPRM*, at ¶113.

<sup>26</sup> *See id.* at ¶ 114.

of number exhaust.<sup>27</sup> Thousands-number pooling is dependent upon the same network architecture as LNP.<sup>28</sup> As noted in the NPRM, LNP still has not been deployed in many switches within the 100 largest MSAs where another carrier has not made a request. Furthermore, commercial mobile radio providers ("CMRS") are not required to deploy LNP until November 24, 2002.<sup>29</sup> Level 3 respectfully submits that the benefits associated with number pooling will not be realized until LNP is implemented throughout the industry, including CMRS providers.<sup>30</sup> In addition, as a matter of policy, all users of numbering resources should equally participate in measures that will conserve the resource. Thus, it is premature to engage in number pooling until all carriers are able to provide LNP.

There are also a number of issues that require resolution before number pooling can be implemented. For example, the North American Numbering Council Report, which gives a fairly thorough overview of the technical, financial, and administrative implication of number policies, makes clear that there are still many issues – such as the establishment of a 10% block contamination threshold and block assignment guidelines – that must be addressed before number pooling is deployed. In terms of setting an appropriate block contamination threshold, the Commission must ensure that CLECs are not disproportionately affected.<sup>31</sup> As with fill rates, the Commission will

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<sup>27</sup> See *id.* at ¶¶130-138 (seeking comment on how to achieve the goal of implementing pooling in areas where the benefits of pooling outweigh its cost).

<sup>28</sup> See *id.* at ¶ 143.

<sup>29</sup> See *id.* at ¶ 144.

<sup>30</sup> See *id.* at ¶ 164.

<sup>31</sup> A number of commenters observed that setting the contamination rate at the 10% level will work to the advantage of ILECs. See *Numbering NPRM*, at ¶¶ 188-189.

have to treat CLECs and ILECs differently to insure that both are regulated in a competitively neutral manner.<sup>32</sup>

If number pooling is established, then the Commission should provide carriers with the ability to obtain waivers. Carriers rely on numbering resources for a variety of reasons. To the extent that a carrier has exigent business reasons to retain such resources, then there should be a process in place where a carrier can demonstrate need and obtain a waiver.

C. Imposing a Sequential Numbering Requirement Negatively Impacts New Entrants

The *NPRM* also indicates that it is seeking comment on requiring carriers to issue numbers sequentially.<sup>33</sup> A valuable option new entrants currently can offer their customers is the ability to select specific telephone numbers. There are obvious business advantages to having vanity numbers that relate to a given customer's trade. Many customers consider this option a necessity and will only add services if they are able to obtain a desirable number. In addition, customers with multiple lines often demand that their telephone numbers be assigned in blocks that make logical sense. For example, if a customer needs fifty lines, they will request the numbers between NXX-XX00 and XX50. But if carriers are required to assign numbers consecutively and the next number up is NXX-XX19, they will not be able to offer their customers the simplicity they require. Thus, if carriers are forced to assign numbers consecutively, they will not be able to provide customers the flexibility to choose numbers that meet their business needs. Requiring all code holders to assign their numbers consecutively will reduce the ability of CLECs to distinguish themselves from other providers of

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<sup>32</sup> To compensate for the difference between the two types of carriers, some commenters have proposed that the contamination level for ILECs should be set at 25%, while for CLECs the rate should be 10%. *See Numbering NPRM*, at ¶ 189.

<sup>33</sup> *See id.* at ¶¶ 190-192.

service and have a negative impact on competition. Level 3 therefore urges the Commission to allow carriers the flexibility to meet the demands of their customers and to allow carriers to meet the demands of the marketplace.

#### **IV. THE COMMISSION SHOULD NOT SELL NUMBERS TO CARRIERS**

Level 3 opposes the implementation of a pricing scheme, either as an isolated regulatory framework, or as part of the other administrative and numbering optimization methods considered by these comments.<sup>34</sup> The premise that numbers are "administratively allocated rather than sold"<sup>35</sup> ignores the fact that carriers incur a great deal of cost just to be in the position to request numbers. Furthermore, imposing costs for numbers creates market barriers for new entrants. New entrants already face substantial costs in attracting end-users, building networks and complying with regulatory requirements. The NPRM further suggests that costs for numbers should be weighed against the societal cost of the current allocation system and that the pricing of numbers, so long as there are no distortions in the market, would be competitively neutral.<sup>36</sup> However, distortions are the norm in the telecommunications market. There already exists a system of historical monopoly and subsidies whereby different classes and types of users subsidize telecommunications services for others. Perhaps if the telecommunications market were completely deregulated on both the federal and state level, then economic theories about competitively neutral prices for numbers would actually work in practice and not in theory, but this is not the case. ILECs and other well-capitalized businesses will be the only benefactors of such a regime.

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<sup>34</sup> See *id.* at ¶ 225.

<sup>35</sup> See *id.* at ¶ 226.

<sup>36</sup> See *id.* at ¶ 230.

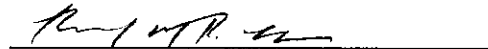
**V. GEOGRAPHIC SPLITS ARE SUPERIOR TO OVERLAYS IN AREAS THAT HAVE NOT IMPLEMENTED NUMBER PORTABILITY**

Level 3 favors geographic splits over all-services overlays in areas that have not implemented number portability. In areas where number portability has not been implemented, new market entrants are at a significant disadvantage as consumers prefer not to switch to a new area code. Thus, carriers with numbering resources in the existing area code maintain an insurmountable competitive advantage. Geographic splits in such areas are competitively neutral, avoid the need for universal 10 digit dialing and increases competition as more carriers are allowed entry.

## VI. CONCLUSION

Level 3 supports the implementation of measures that address the long-term problems associated with number exhaust and that have the greatest promise to yield the largest reserve of numbering resources. As a matter of policy, all carriers that use numbering resources should participate in any conservation measures that are adopted by the Commission. Level 3 opposes administrative measures that simply forestall number exhaust and impose hardship on new market entrants. In adopting number conservation measures that will provide the greatest benefits to all carriers, the Commission must do so in a competitively neutral manner so as to preserve the existing, dynamic, competitive marketplace.

Respectfully submitted,



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